

Introduced by Senator Kuehl

February 12, 2004

An act to amend ~~Section 422.6 of~~ *Section 51.2 of the Civil Code, to amend Sections 200 and 220 of the Education Code, to amend Section 12926 of the Government Code, and to amend Sections 190.03, 422.6, 422.7, 422.75, 594.3, 11410, 11413, 13023, 13515.25, 13519.4, 13519.6 of, to amend and renumber Sections 422.95 1170.75, and 13873 of, to add Sections 422.77, 422.78, 422.86, 422.91, 422.93, 13519.64, 13519.65 to, to add Chapter 1 (commencing with Section 422.55) to Title 11.6 to Part 1 of, to add a chapter heading to Chapter 2 immediately preceding Section 422.6 of Title 11.6 of Part 1 to, to add Chapter 3 (commencing with Section 422.87) and Chapter 4 (commencing with Section 422.89) to Title 11.6 of Part 1 of, to repeal Sections 422.76, 13870, and 13871 of, and to repeal and add Section 422.9 of, the Penal Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1234, as amended, Kuehl. Crimes: civil rights.

Existing law provides that no person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. Existing law also provides that no person, whether

or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics. *Existing law requires that any person who violates these provisions be punished by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$5,000, or by both that fine and imprisonment.*

~~This bill would make a technical, nonsubstantive change to these provisions~~ *revise and recast the provisions relating to hate crimes by, among other things, providing a definition for the term "hate crime." This bill would make any person who violates the above provisions subject to specified fines based on various factors, such as whether the crime was one of violence and whether or not this was a first offense. Because this bill would change the definition of existing crimes, it would impose a state-mandated local program.*

Existing law provides, except in the case of a person punished under the above provisions, that any crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed \$10,000, or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics, under specified circumstances. Existing law provides that if a person or persons, whether or not acting under color of law, interferes by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured by the Constitution or laws of this state, the Attorney General, any district attorney, or any city attorney may bring a civil action, as specified, or may seek a civil penalty of \$25,000.



This bill would make any person who violates these provisions, or an order issued pursuant to these provisions, subject to specified fines based on various factors, such as whether the crime was one of violence and whether or not this was a first offense. The bill would make any hate crime that is punishable by imprisonment in the state prison punishable by a fine of not more than \$25,000 for a first conviction for a hate crime that is a felony or a crime of violence, \$50,000 for a 2nd or subsequent conviction for a hate crime that is a felony or a crime of violence, or the fine prescribed by law, whichever is greater. The bill would also authorize a person who is aggrieved by a violation of a law that is a hate crime to bring a civil action to enjoin the violation, for compensatory and punitive damages, and for the costs of suit and reasonable fees for attorneys and expert witnesses. The bill would authorize the Attorney General, the Director of the Department of Fair Employment and Housing, a district attorney, a county counsel, or a city attorney to bring a civil action to enjoin a violation that is a hate crime, for compensatory damages to persons aggrieved as described above, and for the assessment of a civil penalty against each respondent, in specified amounts.

Under existing law, the Commission on Peace Officer Standards and Training is required to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons. The course is required to contain core instruction in specified areas.

This bill would change the term “developmentally disabled and mentally ill persons” to “mentally disabled persons.” This bill would include in the course instruction, instruction on the fact that crime was committed in whole or in part because of an actual or perceived disability victim is a hate crime. The bill would require the commission, using available funding, to develop a 2-hour telecourse to be made available to all law enforcement agencies in California on crimes against homeless persons and on how to deal effectively and humanely with homeless persons, including homeless persons with disabilities. The telecourse would be required to include information on multiracial criminal extremism, as defined. The bill would also require each state and local law enforcement agency that reports crimes to the Department of Justice to report when a victim appears to be homeless or self-identifies as homeless. Because this bill would increase the duties of local officials, it would impose a state-mandated local program.



Existing law requires the commission to develop guidelines and a course of instruction and training for law enforcement officers who are employed as peace officers, or who are not yet employed as a peace officer but are enrolled in a training academy for law enforcement officers, addressing hate crimes. Existing law requires the course to include instruction in specified areas.

This bill would, in addition, require the course to have instruction in multimission criminal extremism, the special problems inherent in some categories of hate crimes, preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the Attorney General determines are likely. This bill would require that the commission include in the guidelines a framework and possible content of general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and local law enforcement agencies would be encouraged to adopt, as specified.

The bill would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 52.1 of the Civil Code is amended to*
2 *read:*

3 52.1. (a) If a person or persons, whether or not acting under
4 color of law, interferes by threats, intimidation, or coercion, or
5 attempts to interfere by threats, intimidation, or coercion, with the

1 exercise or enjoyment by any individual or individuals of rights
 2 secured by the Constitution or laws of the United States, or of the
 3 rights secured by the Constitution or laws of this state, the Attorney
 4 General, or any district attorney or city attorney may bring a civil
 5 action for injunctive and other appropriate equitable relief in the
 6 name of the people of the State of California, in order to protect
 7 the peaceable exercise or enjoyment of the right or rights secured.
 8 An action brought by the Attorney General, any district attorney,
 9 or any city attorney may also seek a civil penalty of twenty-five
 10 thousand dollars (\$25,000). If this civil penalty is requested, it
 11 shall be assessed individually against each person who is
 12 determined to have violated this section and the penalty shall be
 13 awarded to each individual whose rights under this section are
 14 determined to have been violated.

15 (b) Any individual whose exercise or enjoyment of rights
 16 secured by the Constitution or laws of the United States, or of
 17 rights secured by the Constitution or laws of this state, has been
 18 interfered with, or attempted to be interfered with, as described in
 19 subdivision (a), may institute and prosecute in his or her own name
 20 and on his or her own behalf a civil action for damages, including,
 21 but not limited to, damages under Section 52, injunctive relief, and
 22 other appropriate equitable relief to protect the peaceable exercise
 23 or enjoyment of the right or rights secured.

24 (c) An action brought pursuant to subdivision (a) or (b) may be
 25 filed either in the superior court for the county in which the
 26 conduct complained of occurred or in the superior court for the
 27 county in which a person whose conduct complained of resides or
 28 has his or her place of business. An action brought by the Attorney
 29 General pursuant to subdivision (a) also may be filed in the
 30 superior court for any county wherein the Attorney General has an
 31 office, and in that case, the jurisdiction of the court shall extend
 32 throughout the state.

33 (d) If a court issues a temporary restraining order or a
 34 preliminary or permanent injunction in an action brought pursuant
 35 to subdivision (a) or (b), ordering a defendant to refrain from
 36 conduct or activities, the order issued shall include the following
 37 statement: VIOLATION OF THIS ORDER IS A CRIME
 38 PUNISHABLE UNDER SECTION ~~422.9~~ 422.77 OF THE
 39 PENAL CODE.



1 (e) The court shall order the plaintiff or the attorney for the
2 plaintiff to deliver, or the clerk of the court to mail, two copies of
3 any order, extension, modification, or termination thereof granted
4 pursuant to this section, by the close of the business day on which
5 the order, extension, modification, or termination was granted, to
6 each local law enforcement agency having jurisdiction over the
7 residence of the plaintiff and any other locations where the court
8 determines that acts of violence against the plaintiff are likely to
9 occur. Those local law enforcement agencies shall be designated
10 by the plaintiff or the attorney for the plaintiff. Each appropriate
11 law enforcement agency receiving any order, extension, or
12 modification of any order issued pursuant to this section shall
13 serve forthwith one copy thereof upon the defendant. Each
14 appropriate law enforcement agency shall provide to any law
15 enforcement officer responding to the scene of reported violence,
16 information as to the existence of, terms, and current status of, any
17 order issued pursuant to this section.

18 (f) A court shall not have jurisdiction to issue an order or
19 injunction under this section, if that order or injunction would be
20 prohibited under Section 527.3 of the Code of Civil Procedure.

21 (g) An action brought pursuant to this section is independent of
22 any other action, remedy, or procedure that may be available to an
23 aggrieved individual under any other provision of law, including,
24 but not limited to, an action, remedy, or procedure brought
25 pursuant to Section 51.7.

26 (h) In addition to any damages, injunction, or other equitable
27 relief awarded in an action brought pursuant to subdivision (b), the
28 court may award the petitioner or plaintiff reasonable attorney's
29 fees.

30 (i) A violation of an order described in subdivision (d) may be
31 punished either by prosecution under Section ~~422.9~~ 422.77 of the
32 Penal Code, or by a proceeding for contempt brought pursuant to
33 Title 5 (commencing with Section 1209) of Part 3 of the Code of
34 Civil Procedure. However, in any proceeding pursuant to the Code
35 of Civil Procedure, if it is determined that the person proceeded
36 against is guilty of the contempt charged, in addition to any other
37 relief, a fine may be imposed not exceeding one thousand dollars
38 (\$1,000), or the person may be ordered imprisoned in a county jail
39 not exceeding six months, or the court may order both the
40 imprisonment and fine.

(j) Speech alone is not sufficient to support an action brought pursuant to subdivision (a) or (b), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat.

(k) No order issued in any proceeding brought pursuant to subdivision (a) or (b) shall restrict the content of any person's speech. An order restricting the time, place, or manner of any person's speech shall do so only to the extent reasonably necessary to protect the peaceable exercise or enjoyment of constitutional or statutory rights, consistent with the constitutional rights of the person sought to be enjoined.

SEC. 2. Section 12926 of the Government Code is amended to read:

12926. As used in this part in connection with unlawful practices, unless a different meaning clearly appears from the context:

(a) "Affirmative relief" or "prospective relief" includes the authority to order reinstatement of an employee, awards of backpay, reimbursement of out-of-pocket expenses, hiring, transfers, reassignments, grants of tenure, promotions, cease and desist orders, posting of notices, training of personnel, testing, expunging of records, reporting of records, and any other similar relief that is intended to correct unlawful practices under this part.

(b) "Age" refers to the chronological age of any individual who has reached his or her 40th birthday.

(c) "Employee" does not include any individual employed by his or her parents, spouse, or child, or any individual employed under a special license in a nonprofit sheltered workshop or rehabilitation facility.

(d) "Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows:

"Employer" does not include a religious association or corporation not organized for private profit.

(e) “Employment agency” includes any person undertaking for compensation to procure employees or opportunities to work.

(f) “Essential functions” means the fundamental job duties of the employment position the individual with a disability holds or desires. “Essential functions” does not include the marginal functions of the position.

(1) A job function may be considered essential for any of several reasons, including, but not limited to, any one or more of the following:

(A) The function may be essential because the reason the position exists is to perform that function.

(B) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed.

(C) The function may be highly specialized, so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(2) Evidence of whether a particular function is essential includes, but is not limited to, the following:

(A) The employer’s judgment as to which functions are essential.

(B) Written job descriptions prepared before advertising or interviewing applicants for the job.

(C) The amount of time spent on the job performing the function.

(D) The consequences of not requiring the incumbent to perform the function.

(E) The terms of a collective bargaining agreement.

(F) The work experiences of past incumbents in the job.

(G) The current work experience of incumbents in similar jobs.

(g) “Labor organization” includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection.

(h) “Medical condition” means either of the following:

(1) Any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer.

(2) Genetic characteristics. For purposes of this section, “genetic characteristics” means either of the following:

1 (A) Any scientifically or medically identifiable gene or
2 chromosome, or combination or alteration thereof, that is known
3 to be a cause of a disease or disorder in a person or his or her
4 offspring, or that is determined to be associated with a statistically
5 increased risk of development of a disease or disorder, and that is
6 presently not associated with any symptoms of any disease or
7 disorder.

8 (B) Inherited characteristics that may derive from the
9 individual or family member, that are known to be a cause of a
10 disease or disorder in a person or his or her offspring, or that are
11 determined to be associated with a statistically increased risk of
12 development of a disease or disorder, and that are presently not
13 associated with any symptoms of any disease or disorder.

14 (i) “Mental disability” includes, but is not limited to, all of the
15 following:

16 (1) Having any mental or psychological disorder or condition,
17 such as mental retardation, organic brain syndrome, emotional or
18 mental illness, or specific learning disabilities, that limits a major
19 life activity. For purposes of this section:

20 (A) “Limits” shall be determined without regard to mitigating
21 measures, such as medications, assistive devices, or reasonable
22 accommodations, unless the mitigating measure itself limits a
23 major life activity.

24 (B) A mental or psychological disorder or condition limits a
25 major life activity if it makes the achievement of the major life
26 activity difficult.

27 (C) “Major life activities” shall be broadly construed and shall
28 include physical, mental, and social activities and working.

29 (2) Any other mental or psychological disorder or condition
30 not described in paragraph (1) that requires special education or
31 related services.

32 (3) Having a record or history of a mental or psychological
33 disorder or condition described in paragraph (1) or (2), which is
34 known to the employer or other entity covered by this part.

35 (4) Being regarded or treated by the employer or other entity
36 covered by this part as having, or having had, any mental condition
37 that makes achievement of a major life activity difficult.

38 (5) Being regarded or treated by the employer or other entity
39 covered by this part as having, or having had, a mental or
40 psychological disorder or condition that has no present disabling

1 effect, but that may become a mental disability as described in
2 paragraph (1) or (2).

3 “Mental disability” does not include sexual behavior disorders,
4 compulsive gambling, kleptomania, pyromania, or psychoactive
5 substance use disorders resulting from the current unlawful use of
6 controlled substances or other drugs.

7 (j) “On the bases enumerated in this part” means or refers to
8 discrimination on the basis of one or more of the following: race,
9 religious creed, color, national origin, ancestry, physical disability,
10 mental disability, medical condition, marital status, sex, age, or
11 sexual orientation.

12 (k) “Physical disability” includes, but is not limited to, all of
13 the following:

14 (1) Having any physiological disease, disorder, condition,
15 cosmetic disfigurement, or anatomical loss that does both of the
16 following:

17 (A) Affects one or more of the following body systems:
18 neurological, immunological, musculoskeletal, special sense
19 organs, respiratory, including speech organs, cardiovascular,
20 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
21 and endocrine.

22 (B) Limits a major life activity. For purposes of this section:

23 (i) “Limits” shall be determined without regard to mitigating
24 measures such as medications, assistive devices, prosthetics, or
25 reasonable accommodations, unless the mitigating measure itself
26 limits a major life activity.

27 (ii) A physiological disease, disorder, condition, cosmetic
28 disfigurement, or anatomical loss limits a major life activity if it
29 makes the achievement of the major life activity difficult.

30 (iii) “Major life activities” shall be broadly construed and
31 includes physical, mental, and social activities and working.

32 (2) Any other health impairment not described in paragraph (1)
33 that requires special education or related services.

34 (3) Having a record or history of a disease, disorder, condition,
35 cosmetic disfigurement, anatomical loss, or health impairment
36 described in paragraph (1) or (2), which is known to the employer
37 or other entity covered by this part.

38 (4) Being regarded or treated by the employer or other entity
39 covered by this part as having, or having had, any physical
40 condition that makes achievement of a major life activity difficult.

(5) Being regarded or treated by the employer or other entity covered by this part as having, or having had, a disease, disorder, condition, cosmetic disfigurement, anatomical loss, or health impairment that has no present disabling effect but may become a physical disability as described in paragraph (1) or (2).

(6) “Physical disability” does not include sexual behavior disorders, compulsive gambling, kleptomania, pyromania, or psychoactive substance use disorders resulting from the current unlawful use of controlled substances or other drugs.

(l) Notwithstanding subdivisions (i) and (k), if the definition of “disability” used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (i) or (k), or would include any medical condition not included within those definitions, then that broader protection or coverage shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (i) and (k).

(m) “Race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation” includes a perception that the person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

(n) “Reasonable accommodation” may include either of the following:

(1) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities.

(2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(o) “Religious creed,” “religion,” “religious observance,” “religious belief,” and “creed” include all aspects of religious belief, observance, and practice.

(p) “Sex” includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. “Sex” also includes, but is not limited to, a person’s gender, as defined

1 in Section ~~422.76~~ 422.56 of the Penal Code, ~~except that, for~~
2 ~~purposes of this part, the reference in that definition to the~~
3 ~~“victim” shall mean the employee or applicant and the reference~~
4 ~~in that definition to the “defendant” shall mean the employer or~~
5 ~~other covered entity or person subject to applicable prohibitions~~
6 ~~under this part.~~

7 (q) “Sexual orientation” means heterosexuality,
8 homosexuality, and bisexuality.

9 (r) “Supervisor” means any individual having the authority, in
10 the interest of the employer, to hire, transfer, suspend, lay off,
11 recall, promote, discharge, assign, reward, or discipline other
12 employees, or the responsibility to direct them, or to adjust their
13 grievances, or effectively to recommend that action, if, in
14 connection with the foregoing, the exercise of that authority is not
15 of a merely routine or clerical nature, but requires the use of
16 independent judgment.

17 (s) “Undue hardship” means an action requiring significant
18 difficulty or expense, when considered in light of the following
19 factors:

20 (1) The nature and cost of the accommodation needed.

21 (2) The overall financial resources of the facilities involved in
22 the provision of the reasonable accommodations, the number of
23 persons employed at the facility, and the effect on expenses and
24 resources or the impact otherwise of these accommodations upon
25 the operation of the facility.

26 (3) The overall financial resources of the covered entity, the
27 overall size of the business of a covered entity with respect to the
28 number of employees, and the number, type, and location of its
29 facilities.

30 (4) The type of operations, including the composition,
31 structure, and functions of the workforce of the entity.

32 (5) The geographic separateness, administrative, or fiscal
33 relationship of the facility or facilities.

34 *SEC. 3. Section 200 of the Education Code is amended to*
35 *read:*

36 200. It is the policy of the State of California to afford all
37 persons in public schools, regardless of their sex, ethnic group
38 identification, race, national origin, religion, mental or physical
39 disability, or regardless of any ~~basis~~ *actual or perceived*
40 *characteristic* that is contained in the ~~prohibition~~ *definition* of hate

crimes set forth in ~~subdivision (a) of Section 422.6~~ Section 422.55 of the Penal Code, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.

SEC. 4. Section 220 of the Education Code is amended to read:

220. No person shall be subjected to discrimination on the basis of sex, ethnic group identification, race, national origin, religion, color, mental or physical disability, or any ~~basis actual or perceived characteristic~~ that is contained in the ~~prohibition definition~~ of hate crimes set forth in ~~subdivision (a) of Section 422.6~~ Section 422.55 of the Penal Code in any program or activity conducted by an educational institution that receives, or benefits from, state financial assistance or enrolls pupils who receive state student financial aid.

SEC. 5. Section 190.03 of the Penal Code is amended to read:

190.03. (a) A person who commits first-degree murder ~~that is a hate crime~~ shall be punished by imprisonment in the state prison for life without the possibility of parole, ~~if the defendant intentionally killed the victim because of the victim's disability, gender, or sexual orientation or because of the defendant's perception of the victim's disability, gender, or sexual orientation.~~

(b) The term authorized by subdivision (a) shall not apply unless the allegation is charged in the accusatory pleading and admitted by the defendant or found true by the trier of fact. The court shall not strike the allegation, except in the interest of justice, in which case the court shall state its reasons in writing for striking the allegation.

(c) For the purpose of this section, ~~"because of"~~ means the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. ~~When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. This subdivision does not constitute a change in, but is declaratory of, existing law as set forth in In Re M.S. (1995) 10 Cal.4th 698, 716-720 and People v. Superior Court of San Diego County (Aishman) (1995) 10 Cal.4th 735 "hate crime" has the same meaning as in Section 422.55.~~

(d) Nothing in this section shall be construed to prevent punishment instead pursuant to any other provision of law that imposes a greater or more severe punishment.

SEC. 6. Chapter 1 (commencing with Section 422.55) is added to Title 11.6 of Part 1 of the Penal Code, to read:

CHAPTER 1. DEFINITIONS

422.55. For purposes of this title, and for purposes of all other state law unless an explicit provision of law or the context clearly requires a different meaning, the following shall apply:

(a) "Hate crime" means a criminal act committed, in whole or in part, because of one or more of the following actual or perceived characteristics of the victim:

(1) Disability.

(2) Gender.

(3) Nationality.

(4) Race or ethnicity.

(5) Religion.

(6) Sexual orientation.

(7) Association with a person or group with one or more these actual or perceived characteristics.

(b) "Hate crime" includes, but is not limited to, a violation of Section 422.6.

422.56. For purposes of this title the following definitions shall apply:

(a) "Association with a person or group with these actual or perceived characteristics" includes advocacy for, identification with, or being on the ground owned or rented by, or adjacent to, any of the following: a community center, educational facility, family, individual, office, meeting hall, place of worship, private institution, public agency, library, or other entity, group, or person that has, or is identified with people who have, one or more of those characteristics listed in the definition of "hate crime" under paragraphs 1 to 6, inclusive, of subdivision (a) of Section 422.55.

(b) "Crime of violence" has the same meaning as in subdivision (a) of Section 423.1.

(c) "Disability" includes mental disability and physical disability as defined in Section 12926 of the Government Code.

(d) “Gender” means sex, and includes a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.

(e) “In whole or in part because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result. There is no requirement that the bias be a main factor, or that the crime would not have been committed but for the actual or perceived characteristic. This subdivision does not constitute a change in, but is declaratory of, existing law under *In Re M.S.* (1995) 10 Cal. 4th 698 and *People v. Superior Court (Aishman)*(1995) 10 Cal. 4th 735.

(f) “Nationality” includes citizenship, country of origin, and national origin.

(g) “Race or ethnicity” includes ancestry, color, and ethnic background.

(h) “Religion” includes all aspects of religious belief, observance, and practice and includes agnosticism and atheism.

(i) “Sexual orientation” has the same meaning as in Section 12926 of the Government Code.

(j) “Victim” includes, but is not limited to, a community center, educational facility, entity, family, group, individual, office, meeting hall, person, place of worship, private institution, public agency, library, or other victim or intended victim of the offense. 422.57. For purposes this code, unless an explicit provision of law or the context clearly requires a different meaning, “gender” has the same meaning as in Section 422.56.

SEC. 7. A chapter heading is added to Chapter 2 immediately preceding Section 422.6 of Title 11.6 of Part 1 of the Penal Code, to read:

CHAPTER 2. CRIMES AND PENALTIES

SEC. 8. Section 422.6 of the Penal Code is amended to read:

422.6. (a) No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or

her by the Constitution or laws of this state or by the Constitution or laws of the United States ~~because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.~~ *in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.*

(b) No person, whether or not acting under color of law, shall knowingly deface, damage, or destroy the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the Constitution or laws of this state or by the Constitution or laws of the United States, ~~because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.~~ *in whole or in part because of one or more of the actual or perceived characteristics of the victim listed in subdivision (a) of Section 422.55.*

(c) Any person convicted of violating subdivision (a) or (b) shall be punished by imprisonment in a county jail not to exceed one year, or by a fine ~~not to exceed five thousand dollars (\$5,000)~~ *as prescribed by Section 422.77*, or by both the above imprisonment and fine, and the court shall order the defendant to perform a minimum of community service, not to exceed 400 hours, to be performed over a period not to exceed 350 days, during a time other than his or her hours of employment or school attendance. However, no person shall be convicted of violating subdivision (a) based upon speech alone, except upon a showing that the speech itself threatened violence against a specific person or group of persons and that the defendant had the apparent ability to carry out the threat.

SEC. 9. Section 422.7 of the Penal Code is amended to read:

422.7. Except in the case of a person punished under Section 422.6, any *hate crime* ~~which~~ *that* is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine ~~not to exceed ten thousand dollars (\$10,000)~~ *as prescribed by Section 422.77*, or by both that imprisonment and fine, if the crime is committed against the person or property of

another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States ~~and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the defendant perceives that the other person has one or more of those characteristics~~, under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of five hundred dollars (\$500).

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

SEC. 10. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony *that is a hate crime* or attempts to commit a felony ~~because of the victim's race, color, religion, nationality, country of origin, ancestry, disability, gender, or sexual orientation, or because he or she perceives that the victim has one or more of those characteristics~~ *that is a hate crime*, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) ~~Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony or attempts to commit a felony against the property of a public agency or private institution, including a school, educational facility, library or community center, meeting hall, place of worship, or offices of an advocacy group, or the grounds adjacent to, owned, or rented by the public agency or private institution, because the property of the public agency or private institution is identified or associated with a person or group of an identifiable race, color, religion, nationality, country of origin, ancestry, gender, disability, or sexual orientation, shall receive an additional~~

1 ~~term of one, two, or three years in the state prison, at the court's~~
2 ~~discretion.~~

3 ~~(e)~~ Except in the case of a person punished under Section 422.7
4 or subdivision (a) ~~or (b)~~ of this section, any person who commits
5 a felony *that is a hate crime*, or attempts to commit a felony;
6 ~~because of the victim's race, color, religion, nationality, country of~~
7 ~~origin, ancestry, gender, disability, or sexual orientation, or~~
8 ~~because he or she perceives that the victim has one or more of those~~
9 ~~characteristics~~ *that is a hate crime*, and who voluntarily acted in
10 concert with another person, either personally or by aiding and
11 abetting another person, shall receive an additional two, three, or
12 four years in the state prison, at the court's discretion.

13 ~~(d)~~

14 (c) For the purpose of imposing an additional term under
15 subdivision (a) or ~~(e)~~ (b), it shall be a factor in aggravation that the
16 defendant personally used a firearm in the commission of the
17 offense. Nothing in this subdivision shall preclude a court from
18 also imposing a sentence enhancement pursuant to Section
19 12022.5, 12022.53, or 12022.55, or any other law.

20 ~~(e)~~

21 (d) A person who is punished pursuant to this section also shall
22 receive an additional term of one year in the state prison for each
23 prior felony conviction on charges brought and tried separately in
24 which it was found by the trier of fact or admitted by the defendant
25 that the crime was committed ~~because of the victim's race, color,~~
26 ~~religion, nationality, country of origin, ancestry, disability, gender,~~
27 ~~or sexual orientation, or that the crime was committed because the~~
28 ~~defendant perceived that the victim had one or more of those~~
29 ~~characteristics~~ *a hate crime*. This additional term shall only apply
30 where a sentence enhancement is not imposed pursuant to Section
31 667 or 667.5.

32 ~~(f)~~

33 (e) Any additional term authorized by this section shall not be
34 imposed unless the allegation is charged in the accusatory pleading
35 and admitted by the defendant or found to be true by the trier of
36 fact.

37 ~~(g)~~

38 (f) Any additional term imposed pursuant to this section shall
39 be in addition to any other punishment provided by law.

40 ~~(h)~~

(g) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

(i) ~~(1) “Because of” means that the bias motivation must be a cause in fact of the offense, whether or not other causes also exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the particular result.~~

~~(2) This subdivision does not constitute a change in, but is declaratory of, existing law under In Re M.S. (1995) 10 Cal. 4th 698 and People v. Superior Court (Aishman)(1995) 10 Cal. 4th 735.~~

SEC. 11. Section 422.76 of the Penal Code is repealed.

~~422.76. For purposes of Section 186.21, subdivisions (a) and (b) of Section 422.6, Section 422.7, subdivisions (a), (b), (c), and (e) of Section 422.75, Sections 1170.75 and 11410, paragraph (9) of subdivision (b) of Section 11413, Section 13023, subdivision (e) of Section 13519.4, and subdivision (a) of Section 13519.6, “gender” means the victim’s actual sex or the defendant’s perception of the victim’s sex, and includes the defendant’s perception of the victim’s identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the victim’s sex at birth.~~

SEC. 12. Section 422.77 is added to the Penal Code, to read:

422.77. (a) Any hate crime that is not a crime of violence and is not made punishable by imprisonment in the state prison, and any knowing and willful violation of an order issued pursuant to Chapter 3, or subdivision (a) or (b) of Section 52.1 of the Civil Code that is not a crime of violence, shall be punishable by imprisonment in a county jail for not more than six months, or not more than the term prescribed by any other provision of law, whichever is greater, a fine of two thousand dollars (\$2,000) for a first conviction or violation, five thousand dollars (\$5,000) for a second or subsequent conviction or violation, or the fine prescribed by any other provision of law, whichever is greater, or both that imprisonment and fine.

(b) Any hate crime that is a crime of violence and is not made punishable by imprisonment in the state prison, and any second or subsequent knowing and willful violation of an order issued pursuant to Chapter 3, or subdivision (a) or (b) of Section 52.1 of

1 *the Civil Code, shall be punishable by imprisonment in the county*
2 *jail for not more than one year, or not more than the term*
3 *prescribed by any other provision of law, whichever is greater, a*
4 *fine of not more than twenty-five thousand dollars (\$25,000) for a*
5 *first conviction or violation, fifty thousand dollars (\$50,000) for*
6 *a second or subsequent conviction or violation, or the fine*
7 *prescribed by any other provision of law, whichever is greater, or*
8 *both that imprisonment and fine.*

9 (c) *Any hate crime that is made punishable by imprisonment in*
10 *the state prison shall be punishable by the term prescribed by law,*
11 *a fine of not more than twenty-five thousand dollars (\$25,000) for*
12 *a first conviction for a hate crime that is a felony or a crime of*
13 *violence, fifty thousand dollars (\$50,000) for a second or*
14 *subsequent conviction for a hate crime that is a felony or a crime*
15 *of violence, or the fine prescribed by any other provision of law,*
16 *whichever is greater, or both that imprisonment and fine.*

17 (d) *The court also may order the defendant to perform a*
18 *minimum of community service, not to exceed 400 hours, to be*
19 *performed over a period not to exceed 350 days, during a time*
20 *other than his or her hours of employment or school attendance.*

21 (e) *Subject to the discretion of the court, the prosecution shall*
22 *have the opportunity to present witnesses and relevant evidence at*
23 *the time of the sentencing of a defendant pursuant to this title*

24 SEC. 13. *Section 422.78 is added to the Penal Code, to read:*

25 422.78. *The prosecuting agency of each county shall have the*
26 *primary responsibility for the enforcement of orders issued*
27 *pursuant to this title or Section 52.1 of the Civil Code.*

28 SEC. 14. *Section 422.86 is added to the Penal Code, to read:*

29 422.86. (a) *It is the public policy of this state that the*
30 *principal goals of sentencing for hate crimes, including imposing*
31 *civil remedies pursuant to Chapter 3 (commencing with Section*
32 *422.87) and other provisions of law, are the following:*

33 (1) *Punishment for the hate crimes committed.*

34 (2) *Crime and violence prevention, including prevention of*
35 *recidivism and prevention of crimes and violence in prisons and*
36 *jails.*

37 (3) *Restorative justice for the immediate victims of the hate*
38 *crimes and for the classes of persons terrorized by the hate crimes.*

39 (b) *The Judicial Council shall develop a Rule of Court guiding*
40 *hate crime sentencing, including imposing civil remedies pursuant*

to Chapter 3 and other provisions of law, to implement the policy in subdivision (a). In developing the Rule of Court, the council shall consult experts including organizations representing hate crime victims.

SEC. 15. Chapter 3 (commencing with Section 422.87) is added to Title 11.6 of Part 1 of the Penal Code, to read:

CHAPTER 3. CIVIL REMEDIES

422.87. (a) A person who is aggrieved by a violation of a law that is a hate crime may bring a civil action to enjoin the violation, for compensatory and punitive damages, and for the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of a final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of one thousand dollars (\$1,000) per violation that does not constitute a crime of violence, and five thousand dollars (\$5,000) per violation that constitutes a crime of violence.

(b) The Attorney General, the Director of the Department of Fair Employment and Housing, a district attorney, a county counsel, or a city attorney may bring a civil action to enjoin a violation that is a hate crime, for compensatory damages to persons aggrieved as described in subdivision (a), and for the assessment of a civil penalty against each respondent. The civil penalty shall not exceed two thousand dollars (\$2,000) for a first violation that does not constitute a crime of violence, five thousand dollars (\$5,000) for a second or subsequent violation that does not constitute a crime of violence, and twenty five thousand dollars (\$25,000) for a first violation that constitutes a crime of violence, and fifty thousand dollars (\$50,000) for a second or subsequent violation that constitutes a crime of violence.

422.88. (a) The court in which a criminal or civil proceeding stemming from a hate crime or alleged hate crime is filed shall take all actions reasonably required, including granting restraining orders, to safeguard the health, safety, or privacy of the alleged victim, or of a person who is a victim of, or at risk of becoming a victim of, a hate crime.

(b) Restraining orders issued pursuant to subdivision (a) may include provisions prohibiting or restricting the photographing of

1 a person who is a victim of, or at risk of becoming a victim of, a
2 hate crime when reasonably required to safeguard the health,
3 safety, or privacy of that person.

4 (c) A court may, in its discretion, permit an individual who is
5 a victim of, or at risk of becoming a victim of, a hate crime to use
6 a pseudonym in a civil proceeding described in subdivision (a)
7 when reasonably required to safeguard the health, safety, or
8 privacy of that person.

9 SEC. 16. Chapter 4 (commencing with Section 422.89) is
10 added to Title 11.6 of Part 1 of the Penal Code, to read:

11
12 CHAPTER 4. GENERAL PROVISIONS
13

14 422.89. It is the intent of the Legislature to encourage
15 counties, cities, law enforcement agencies, and school districts to
16 establish education and training programs to prevent violations of
17 civil rights and hate crimes and to assist victims.

18 SEC. 17. Section 422.9 of the Penal Code is repealed.

19 ~~422.9. (a) Any willful and knowing violation of any order
20 issued pursuant to subdivision (a) or (b) of Section 52.1 of the Civil
21 Code shall be a misdemeanor punishable by a fine of not more than
22 one thousand dollars (\$1,000), or by imprisonment in the county
23 jail for not more than six months, or by both the fine and
24 imprisonment.~~

25 ~~(b) A person who has previously been convicted one or more
26 times of violating an order issued pursuant to subdivision (a) or (b)
27 of Section 52.1 of the Civil Code upon charges separately brought
28 and tried shall be imprisoned in the county jail for not more than
29 one year. Subject to the discretion of the court, the prosecution
30 shall have the opportunity to present witnesses and relevant
31 evidence at the time of the sentencing of a defendant pursuant to
32 this subdivision.~~

33 ~~(c) The prosecuting agency of each county shall have the
34 primary responsibility for the enforcement of orders issued
35 pursuant to Section 52.1 of the Civil Code.~~

36 SEC. 18. Section 422.9 is added to the Penal Code, to read:

37 422.9. All state and local agencies shall use the definition of
38 “hate crime” set forth in subdivision (a) of Section 422.55
39 exclusively, except as other explicit provisions of state or federal
40 law may require otherwise.

1 SEC. 19. Section 422.91 is added to the Penal Code, to read:
2 422.91. The Department of Corrections and the California
3 Youth Authority, subject to available funding, shall do each of the
4 following:

5 (a) Cooperate fully and participate actively with federal, state,
6 and local law enforcement agencies and community hate crime
7 prevention and response networks and other anti-hate groups
8 concerning hate crimes and gangs.

9 (b) Strive to provide inmates with safe environments in which
10 they are not pressured to join gangs or hate groups and do not feel
11 a need to join them in self-defense.

12 SEC. 20. Section 422.93 is added to the Penal Code, to read:

13 422.93. (a) It is the public policy of this state to protect the
14 public from crime and violence by encouraging all persons who
15 are victims of or witnesses to crimes, or who otherwise can give
16 evidence in a criminal investigation, to cooperate with the
17 criminal justice system and not to penalize these persons for being
18 victims or for cooperating with the criminal justice system.

19 (b) Whenever an individual who is a victim of or witness to a
20 hate crime, or who otherwise can give evidence in a hate crime
21 investigation, is not suspected of committing any crime under state
22 law, a peace officer may not detain the individual exclusively for
23 any actual or suspected immigration violation that is not a crime
24 or report or turn the individual over to federal immigration
25 authorities.

26 SEC. 21. Section 422.95 of the Penal Code is amended and
27 renumbered to read:

28 ~~422.95.~~

29 422.85. (a) In the case of any person who is ~~granted probation~~
30 ~~for convicted~~ of any offense defined in Section 422.6, ~~422.7,~~
31 ~~422.75,~~ 302, 423.2, 594.3, ~~or~~ 11411, 11412, or 11413, or for any
32 hate crime, the court may order that the defendant be required to
33 do one or all of the following as a condition of probation:

34 (1) Complete a class or program on racial or ethnic sensitivity,
35 or other similar training in the area of civil rights, or a one-year
36 counseling program intended to reduce the tendency toward
37 violent and anti-social behavior if that class, program, or training
38 is available and was developed or authorized by the court or local
39 agencies in cooperation with organizations serving the affected
40 community.

(2) Make payments or other compensation to a community-based program or local agency that provides services to victims of hate violence.

(3) Be required to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's acts.

(b) Any payments or other compensation ordered under this section shall be in addition to restitution payments required under Section 1203.04, and shall be made only after that restitution is paid in full.

~~(c) It is the intent of the Legislature to encourage counties, cities, and school districts to establish education and training programs to prevent violations of civil rights and hate crimes.~~

SEC. 22. *Section 594.3 of the Penal Code is amended to read:*

594.3. (a) Any person who knowingly commits any act of vandalism to a church, synagogue, *mosque*, *temple*, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery is guilty of a crime punishable by imprisonment in the state prison or by imprisonment in the county jail for not exceeding one year.

(b) Any person who knowingly commits any act of vandalism to a church, synagogue, *mosque*, *temple*, building owned and occupied by a religious educational institution, or other place primarily used as a place of worship where religious services are regularly conducted or a cemetery, which is shown to have been committed by reason of the race, color, religion, or national origin of another individual or group of individuals a *hate crime* and to have been committed for the purpose of intimidating and deterring persons from freely exercising their religious beliefs, is guilty of a felony punishable by imprisonment in the state prison.

(c) *For purposes of this section, 'hate crime' has the same meaning as Section 422.55.*

SEC. 23. *Section 1170.75 of the Penal Code is amended and renumbered to read:*

~~1170.75.~~

422.76. Except where the court imposes additional punishment under Section 422.75 or in a case in which the person has been convicted of an offense subject to Section 1170.8, the fact that a person committed a felony or attempted to commit a felony

1 ~~because of the victim's race, color, religion, nationality, country of~~
2 ~~origin, ancestry, disability, gender, or sexual orientation, or~~
3 ~~because he or she perceived that the victim had one or more of~~
4 ~~those characteristics, that is a hate crime~~ shall be considered a
5 circumstance in aggravation of the crime in imposing a term under
6 subdivision (b) of Section 1170.

7 *SEC. 24. Section 11410 of the Penal Code is amended to read:*

8 11410. (a) The Legislature finds and declares that it is the
9 right of every person regardless of ~~race, color, creed, religion,~~
10 ~~gender, or national origin~~ *actual or perceived disability, gender,*
11 *nationality, race or ethnicity, religion, sexual orientation, or*
12 *association with a person or group of these actual or perceived*
13 *characteristics, to be secure and protected from fear, intimidation,*
14 *and physical harm caused by the activities of violent groups and*
15 *individuals. It is not the intent of this chapter to interfere with the*
16 *exercise of rights protected by the Constitution of the United*
17 *States. The Legislature recognizes the constitutional right of every*
18 *citizen to harbor and express beliefs on any subject whatsoever and*
19 *to associate with others who share similar beliefs. The Legislature*
20 *further finds however, that the advocacy of unlawful violent acts*
21 *by groups against other persons or groups under circumstances*
22 *where death or great bodily injury is likely to result is not*
23 *constitutionally protected, poses a threat to public order and safety*
24 *and should be subject to criminal and civil sanctions.*

25 *(b) For purposes of this section, the terms "disability,"*
26 *"gender," "nationality," "race or ethnicity," "religion," "sexual*
27 *orientation," and "association with a person or group with these*
28 *actual or perceived characteristics" have the same meaning as in*
29 *Section 422.55 and 422.56.*

30 *SEC. 25. Section 11413 of the Penal Code is amended to read:*

31 11413. (a) Any person who explodes, ignites, or attempts to
32 explode or ignite any destructive device or any explosive, or who
33 commits arson, in or about any of the places listed in subdivision
34 (b), for the purpose of terrorizing another or in reckless disregard
35 of terrorizing another is guilty of a felony, and shall be punished
36 by imprisonment in the state prison for three, five, or seven years,
37 and a fine not exceeding ten thousand dollars (\$10,000).

38 (b) Subdivision (a) applies to the following places:

39 (1) Any health facility licensed under Chapter 2 (commencing
40 with Section 1250) of Division 2 of the Health and Safety Code,

1 or any place where medical care is provided by a licensed health
2 care professional.

3 (2) Any church, temple, synagogue, *mosque*, or other place of
4 worship.

5 (3) The buildings, offices, and meeting sites of organizations
6 that counsel for or against abortion or among whose major
7 activities are lobbying, publicizing, or organizing with respect to
8 public or private issues relating to abortion.

9 (4) Any place at which a lecture, film-showing, or other private
10 meeting or presentation that educates or propagates with respect
11 to abortion practices or policies, whether on private property or at
12 a meeting site authorized for specific use by a private group on
13 public property, is taking place.

14 (5) Any bookstore or public or private library.

15 (6) Any building or facility designated as a courthouse.

16 (7) The home or office of a judicial officer.

17 (8) Any building or facility regularly occupied by county
18 probation department personnel in which the employees perform
19 official duties of the probation department.

20 (9) Any private property, if the property was targeted ~~because~~
21 ~~of the race, color, religion, ancestry, national origin, disability,~~
22 ~~gender, or sexual orientation of the owner or occupant of the~~
23 ~~property~~ *in whole or in part because of any of the actual or*
24 *perceived characteristics of the owner or occupant of the property*
25 *listed in subdivision (a) of Section 422.55.*

26 (10) Any public or private school providing instruction in
27 kindergarten or grades 1 to 12, inclusive.

28 (c) As used in this section, “judicial officer” means a
29 magistrate, judge, justice, commissioner, referee, or any person
30 appointed by a court to serve in one of these capacities, of any state
31 or federal court located in this state.

32 (d) As used in this section, “terrorizing” means to cause a
33 person of ordinary emotions and sensibilities to fear for personal
34 safety.

35 (e) Nothing in this section shall be construed to prohibit the
36 prosecution of any person pursuant to Section 12303.3 or any other
37 provision of law in lieu of prosecution pursuant to this section.

38 *SEC. 26. Section 13023 of the Penal Code is amended to read:*

39 *13023. Commencing July 1, 1990, subject (a) Subject to the*
40 *availability of adequate funding, the Attorney General shall direct*

1 local law enforcement agencies to report to the Department of
2 Justice, in a manner to be prescribed by the Attorney General, any
3 information that may be required relative to ~~any criminal acts or~~
4 ~~attempted criminal acts to cause physical injury, emotional~~
5 ~~suffering, or property damage where there is a reasonable cause to~~
6 ~~believe that the crime was motivated, in whole or in part, by the~~
7 ~~victim's race, ethnicity, religion, gender, sexual orientation,~~
8 ~~national origin, or physical or mental disability. On or before July~~
9 ~~1, 1992, and every July 1 thereafter, hate crimes, and shall provide~~
10 ~~to the department any general orders or formal policies on hate~~
11 ~~crimes and the hate crime pamphlet required pursuant to Section~~
12 ~~422.92.~~

13 (b) *On or before July 1 of each year, the Department of Justice*
14 *shall submit a report to the Legislature analyzing the results of the*
15 *information obtained from local law enforcement agencies*
16 *pursuant to this section.*

17 (c) *For purposes of this section, "hate crime" has the same*
18 *meaning as in Section 422.55.*

19 SEC. 27. *Section 13515.25 of the Penal Code is amended to*
20 *read:*

21 13515.25. (a) The Commission on Peace Officer Standards
22 and Training shall, ~~on or before June 30, 2001,~~ establish and keep
23 updated a continuing education classroom training course relating
24 to law enforcement interaction with ~~developmentally disabled and~~
25 ~~mentally ill~~ *mentally disabled* persons. The training course shall
26 be developed by the commission in consultation with appropriate
27 community, local, and state organizations and agencies that have
28 expertise in the area of mental illness and developmental
29 disability, and with appropriate consumer and family advocate
30 groups. In developing the course, the commission shall also
31 examine existing courses certified by the commission that relate
32 to ~~mentally ill and developmentally~~ disabled persons. The
33 commission shall make the course available to law enforcement
34 agencies in California.

35 (b) The course described in subdivision (a) shall consist of
36 classroom instruction and shall utilize interactive training methods
37 to ensure that the training is as realistic as possible. The course
38 shall include, at a minimum, core instruction in all of the
39 following:

1 (1) The cause and nature of mental illnesses and developmental
2 disabilities.

3 (2) How to identify indicators of mental ~~illness and~~
4 ~~developmental~~ disability and how to respond appropriately in a
5 variety of common situations.

6 (3) Conflict resolution and de-escalation techniques for
7 potentially dangerous situations involving mentally ~~ill and~~
8 ~~developmentally~~ disabled persons.

9 (4) Appropriate language usage when interacting with
10 mentally ~~ill and developmentally~~ disabled persons.

11 (5) Alternatives to lethal force when interacting with
12 potentially dangerous mentally ~~ill and developmentally~~ disabled
13 persons.

14 (6) Community and state resources available to serve mentally
15 ~~ill and developmentally~~ disabled persons and how these resources
16 can be best utilized by law enforcement to benefit the mentally ~~ill~~
17 ~~and developmentally~~ disabled community.

18 (7) *The fact that a crime committed in whole or in part because*
19 *of an actual or perceived disability of the victim is a hate crime*
20 *punishable under Title 11.6 (commencing with Section 422.55) of*
21 *Part 1.*

22 (c) The commission shall submit a report to the Legislature by
23 October 1, 2004, that shall include all of the following:

24 (1) A description of the process by which the course was
25 established, including a list of the agencies and groups that were
26 consulted.

27 (2) Information on the number of law enforcement agencies
28 that utilized, and the number of officers that attended, the course
29 or other courses certified by the commission relating to mentally
30 ~~ill and developmentally~~ disabled persons from July 1, 2001, to July
31 1, 2003, inclusive.

32 (3) Information on the number of law enforcement agencies
33 that utilized, and the number of officers that attended, courses
34 certified by the commission relating to mentally ~~ill and~~
35 ~~developmentally~~ disabled persons from July 1, 2000, to July 1,
36 2001, inclusive.

37 (4) An analysis of the Police Crisis Intervention Training (CIT)
38 Program used by the San Francisco and San Jose Police
39 Departments, to assess the training used in these programs and
40 compare it with existing courses offered by the commission in

1 order to evaluate the adequacy of mental ~~illness and~~
2 ~~developmental~~ disability training available to local law
3 enforcement officers.

4 (d) The Legislature encourages law enforcement agencies to
5 include the course created in this section, ~~or~~ and any other course
6 certified by the commission relating to mentally ~~ill and~~
7 ~~developmentally~~ disabled persons, as part of their advanced
8 officer training program.

9 (e) It is the intent of the Legislature to reevaluate, on the basis
10 of its review of the report required in subdivision (c), the extent to
11 which law enforcement officers are receiving adequate training in
12 how to interact with mentally ~~ill and developmentally~~ disabled
13 persons.

14 SEC. 28. *Section 13519.4 of the Penal Code is amended to*
15 *read:*

16 13519.4. (a) ~~On or before August 1, 1993, the~~ *The*
17 commission shall develop and disseminate guidelines and training
18 for all law enforcement officers in California as described in
19 subdivision (a) of Section 13510 and who adhere to the standards
20 approved by the commission, on the racial and cultural differences
21 among the residents of this state. The course or courses of
22 instruction and the guidelines shall stress understanding and
23 respect for racial and cultural differences, and development of
24 effective, noncombative methods of carrying out law enforcement
25 duties in a racially and culturally diverse environment.

26 (b) The course of basic training for law enforcement officers
27 shall, ~~no later than August 1, 1993,~~ include adequate instruction on
28 racial and cultural diversity in order to foster mutual respect and
29 cooperation between law enforcement and members of all racial
30 and cultural groups. In developing the training, the commission
31 shall consult with appropriate groups and individuals having an
32 interest and expertise in the field of cultural awareness and
33 diversity.

34 (c) For the purposes of this section, ~~“culturally the following~~
35 *shall apply:*

36 (1) *“Disability,” “gender,” “nationality,” “religion,” and*
37 *“sexual orientation” have the same meaning as in Section 422.55.*

38 (2) *“Culturally diverse” and “cultural diversity” include, but*
39 *are not limited to, disability, gender, nationality, religion, and*
40 *sexual orientation issues. The*

1 (3) “Racial” has the same meaning as “race or ethnicity” in
2 Section 422.55.

3 (d) The Legislature finds and declares as follows:

4 (1) Racial profiling is a practice that presents a great danger to
5 the fundamental principles of a democratic society. It is abhorrent
6 and cannot be tolerated.

7 (2) Motorists who have been stopped by the police for no
8 reason other than the color of their skin or their apparent
9 nationality or ethnicity are the victims of discriminatory practices.

10 (3) It is the intent of the Legislature in enacting the changes to
11 Section 13519.4 of the Penal Code made by the act that added this
12 subdivision that more than additional training is required to
13 address the pernicious practice of racial profiling and that
14 enactment of this bill is in no way dispositive of the issue of how
15 the state should deal with racial profiling.

16 (4) The working men and women in California law
17 enforcement risk their lives every day. The people of California
18 greatly appreciate the hard work and dedication of law
19 enforcement officers in protecting public safety. The good name
20 of these officers should not be tarnished by the actions of those few
21 who commit discriminatory practices.

22 ~~(d)~~

23 (e) “Racial profiling,” for purposes of this section, is the
24 practice of detaining a suspect based on a broad set of criteria
25 which casts suspicion on an entire class of people without any
26 individualized suspicion of the particular person being stopped.

27 ~~(e)~~

28 (f) A law enforcement officer shall not engage in racial
29 profiling.

30 ~~(f)~~

31 (g) Every law enforcement officer in this state shall participate
32 in expanded training as prescribed and certified by the
33 Commission on Peace Officers Standards and Training. Training
34 shall begin being offered no later than January 1, 2002. The
35 curriculum shall be created by the commission in collaboration
36 with a five-person panel, appointed no later than March 1, 2001,
37 as follows: the Governor shall appoint three members and one
38 member each shall be appointed by the Senate Committee on Rules
39 and the Speaker of the Assembly. Each appointee shall be

1 appointed from among prominent members of the following
2 organizations:

- 3 (1) State Conference of the NAACP.
- 4 (2) Brotherhood Crusade.
- 5 (3) Mexican American Legal Defense and Education Fund.
- 6 (4) The League of United Latin American Citizens.
- 7 (5) American Civil Liberties Union.
- 8 (6) Anti-Defamation League.
- 9 (7) California NOW.
- 10 (8) Asian Pacific Bar of California.
- 11 (9) The Urban League.

12 ~~(g)~~
13 *(h)* Members of the panel shall not be compensated, except for
14 reasonable per diem expenses related to their work for panel
15 purposes.

16 ~~(h)~~
17 *(i)* The curriculum shall utilize the Tools for Tolerance for Law
18 Enforcement Professionals framework and shall include and
19 examine the patterns, practices, and protocols that make up racial
20 profiling. This training shall prescribe patterns, practices, and
21 protocols that prevent racial profiling. In developing the training,
22 the commission shall consult with appropriate groups and
23 individuals having an interest and expertise in the field of racial
24 profiling. The course of instruction shall include, but not be
25 limited to, adequate consideration of each of the following
26 subjects:

- 27 (1) Identification of key indices and perspectives that make up
28 cultural differences among residents in a local community.
- 29 (2) Negative impact of biases, prejudices, and stereotyping on
30 effective law enforcement, including examination of how
31 historical perceptions of discriminatory enforcement practices
32 have harmed police-community relations.
- 33 (3) The history and the role of the civil rights movement and
34 struggles and their impact on law enforcement.
- 35 (4) Specific obligations of officers in preventing, reporting,
36 and responding to discriminatory or biased practices by fellow
37 officers.
- 38 (5) Perspectives of diverse, local constituency groups and
39 experts on particular cultural and police-community relations
40 issues in a local area.

1 ~~(i)~~

2 (j) Once the initial basic training is completed, each law
3 enforcement officer in California as described in subdivision (a)
4 of Section 13510 who adheres to the standards approved by the
5 commission shall be required to complete a refresher course every
6 five years thereafter, or on a more frequent basis if deemed
7 necessary, in order to keep current with changing racial and
8 cultural trends.

9 ~~(j)~~

10 (k) The Legislative Analyst shall conduct a study of the data
11 being voluntarily collected by those jurisdictions that have
12 instituted a program of data collection with regard to racial
13 profiling, including, but not limited to, the California Highway
14 Patrol, the City of San Jose, and the City of San Diego, both to
15 ascertain the incidence of racial profiling and whether data
16 collection serves to address and prevent such practices, as well as
17 to assess the value and efficacy of the training herein prescribed
18 with respect to preventing local profiling. The Legislative Analyst
19 may prescribe the manner in which the data is to be submitted and
20 may request that police agencies collecting such data submit it in
21 the requested manner. The Legislative Analyst shall provide to the
22 Legislature a report and recommendations with regard to racial
23 profiling by July 1, 2002.

24 SEC. 29. *Section 13519.6 of the Penal Code is amended to*
25 *read:*

26 13519.6. (a) The commission shall, ~~on or before December~~
27 ~~31, 1993,~~ develop guidelines and a course of instruction and
28 training for law enforcement officers who are employed as peace
29 officers, or who are not yet employed as a peace officer but are
30 enrolled in a training academy for law enforcement officers,
31 addressing hate crimes. "Hate crimes," for purposes of this
32 section, ~~means any act of intimidation, harassment, physical force,~~
33 ~~or the threat of physical force directed against any person, or~~
34 ~~family, or their property or advocate, motivated either in whole or~~
35 ~~in part by the hostility to the real or perceived ethnic background,~~
36 ~~national origin, religious belief, gender, age, disability, or sexual~~
37 ~~orientation, with the intention of causing fear and intimidation has~~
38 *the same meaning as in Section 422.55.*

(b) The course shall make maximum use of audio and video communication and other simulation methods and shall include instruction in each of the following ~~procedures and techniques~~:

(1) Indicators of hate crimes.

(2) The impact of these crimes on the victim, the victim's family, and the community, *and the assistance and compensation available to victims.*

(3) Knowledge of the laws dealing with hate crimes and the legal rights of, and the remedies available to, victims of hate crimes.

(4) Law enforcement procedures, reporting, and documentation of hate crimes.

(5) Techniques and methods to handle incidents of hate crimes in a noncombative manner.

(6) *Multimission criminal extremism, which means the nexus of certain hate crimes, antigovernment extremist crimes, antireproductive-rights crimes, and crimes committed in whole or in part because of the victims' actual or perceived homelessness.*

(7) *The special problems inherent in some categories of hate crimes, including gender-bias crimes, disability-bias crimes, including those committed against homeless persons with disabilities, antiimmigrant crimes, and anti-Arab and anti-Islamic crimes, and techniques and methods to handle these special problems.*

(8) *Preparation for, and response to, possible future anti-Arab/Middle Eastern and anti-Islamic hate crime waves, and any other future hate crime waves that the Attorney General determines are likely.*

(c) The guidelines developed by the commission shall incorporate the procedures and techniques specified in subdivision (b), *and shall include a framework and possible content of a general order or other formal policy on hate crimes that all state law enforcement agencies shall adopt and the commission shall encourage all local law enforcement agencies to adopt. The elements of the framework shall include, but not be limited to, the following:*

(1) *A message from the law enforcement agency's chief executive officer to the agency's officers and staff concerning the importance of hate crime laws and the agency's commitment to enforcement.*

1 (2) *The definition of “hate crime” in Section 422.55.*

2 (3) *References to hate crime statutes including Section 422.6.*

3 (4) *A title-by-title specific protocol that agency personnel are*
4 *required to follow, including, but not limited to, the following:*

5 (A) *Preventing and preparing for likely hate crimes by, among*
6 *other things, establishing contact with persons and communities*
7 *who are likely targets, and forming and cooperating with*
8 *community hate crime prevention and response networks.*

9 (B) *Responding to reports of hate crimes, including reports of*
10 *hate crimes committed under the color of authority.*

11 (C) *Accessing assistance, by, among other things, activating*
12 *the Department of Justice hate crime rapid response protocol when*
13 *necessary.*

14 (D) *Providing victim assistance and follow-up, including*
15 *community follow-up.*

16 (E) *Reporting.*

17 (d) (1) *The course of training leading to the basic certificate*
18 *issued by the commission shall, ~~not later than July 1, 1994,~~ include*
19 *the course of instruction described in subdivision (a).*

20 (2) *Every state law enforcement and correctional agency, and*
21 *every local law enforcement and correctional agency to the extent*
22 *that this requirement does not create a state-mandated local*
23 *program cost, shall provide its peace officers with the basic course*
24 *of instruction as revised pursuant to the act that amends this*
25 *section in the 2003–04 session of the Legislature, beginning with*
26 *officers who have not previously received the training.*
27 *Correctional agencies shall adapt the course as necessary.*

28 (e) *As used in this section, “peace officer” means any person*
29 *designated as a peace officer by Section 830.1 or 830.2.*

30 SEC. 30. *Section 13519.64 is added to the Penal Code, to*
31 *read:*

32 13519.64. (a) *The Legislature finds and declares that*
33 *research, including “Special Report to the Legislature on Senate*
34 *Resolution 18: Crimes Committed Against Homeless Persons” by*
35 *the Department of Justice and “Hate, Violence, and Death: A*
36 *Report on Hate Crimes Against People Experiencing*
37 *Homelessness from 1999–2002” by the National Coalition for the*
38 *Homeless demonstrate that California has had serious and*
39 *unaddressed problems of crime against homeless persons,*
40 *including homeless persons with disabilities.*

1 **(b) (1)** *The Commission on Peace Officer Standards and*
2 *Training, using available funding, shall develop a two-hour*
3 *telecourse to be made available to all law enforcement agencies*
4 *in California on crimes against homeless persons and on how to*
5 *deal effectively and humanely with homeless persons, including*
6 *homeless persons with disabilities. The telecourse shall include*
7 *information on multimission criminal extremism, as defined in*
8 *Section 13519.6. In developing the telecourse, the commission*
9 *shall consult subject-matter experts including, but not limited to,*
10 *homeless and formerly homeless persons in California, service*
11 *providers and advocates for homeless persons in California,*
12 *experts on the disabilities that homeless persons commonly suffer,*
13 *the California Council of Churches, the National Coalition for the*
14 *Homeless, the Senate Office of Research, and the Criminal Justice*
15 *Statistics Center of the Department of Justice.*

16 **(2)** *Every state law enforcement agency, and every local law*
17 *enforcement agency, to the extent that this requirement does not*
18 *create a state-mandated local program cost, shall provide the*
19 *telecourse to its peace officers.*

20 **SEC. 31.** *Section 13519.65 is added to the Penal Code, to*
21 *read:*

22 **13519.65.** *(a) Each state and local law enforcement agency*
23 *that reports crimes to the Department of Justice pursuant to other*
24 *provisions of law shall report when a victim appears to be*
25 *homeless or self-identifies as homeless.*

26 **(b)** *In requiring law enforcement agencies to report*
27 *information pursuant to other provisions of law, the department*
28 *shall not do any of the following to meet the requirements of this*
29 *section:*

30 **(1)** *Require any information except whether the victim is*
31 *homeless.*

32 **(2)** *Require a law enforcement agency to begin reporting the*
33 *information that this section requires until the law enforcement*
34 *agency has exhausted all the reporting forms that omit that*
35 *information and that the law enforcement agency printed to*
36 *comply with the requirements of the other provisions of law before*
37 *the effective date of this section.*

38 **(3)** *Require a local law enforcement agency to take any other*
39 *action that would incur a state-mandated local program cost.*

1 (c) The department, subject to the availability of adequate
2 funds, shall analyze the information it receives pursuant to this
3 section and submit a report to the Legislature annually starting
4 January 1, 2006, including any recommendations for legislation
5 the Attorney General deems necessary. The department may
6 combine the report with any other report it submits to reduce costs.

7 SEC. 32. Section 13870 of the Penal Code is repealed.

8 ~~13870. The Legislature finds that racial, ethnic, and religious~~
9 ~~crimes occur throughout California and that no single agency now~~
10 ~~either provides assistance or monitors the full range of this crime~~
11 ~~in the state on a consistent basis. The Legislature further declares~~
12 ~~that exposure of the facts about racial, ethnic, and religious crimes~~
13 ~~will lead to greater public awareness of the problem of bigotry and~~
14 ~~prejudice and will provide a foundation for developing remedies~~
15 ~~to the problem.~~

16 ~~In enacting this chapter, the Legislature intends to take the~~
17 ~~preliminary steps needed to establish a statewide information~~
18 ~~center to receive and evaluate information reflecting racial, ethnic,~~
19 ~~and religious crime. It is intended that this information will~~
20 ~~provide a precise picture of the geographic distribution of these~~
21 ~~crimes and trends over time.~~

22 SEC. 33. Section 13871 of the Penal Code is repealed.

23 ~~13871. The Attorney General shall, on January 1, 1985,~~
24 ~~commence a one-year project to develop a program model to~~
25 ~~collect, compile, and analyze information about racial, ethnic, and~~
26 ~~religious crimes. The project shall include, but not be limited to,~~
27 ~~all of the following duties:~~

28 ~~(a) Develop uniform guidelines for consistent identification of~~
29 ~~racial, ethnic, and religious crimes.~~

30 ~~(b) Recommend an appropriate means for statewide collection~~
31 ~~of data on racial, ethnic, and religious crimes.~~

32 ~~(c) Recommend an appropriate state agency to implement~~
33 ~~collection of this information.~~

34 ~~(d) Submit to the Legislature a final report describing the~~
35 ~~findings of the study by January 1, 1986.~~

36 SEC. 34. Section 13873 of the Penal Code is amended and
37 renumbered to read:

38 ~~13873.~~

1 422.92. (a) Every *state and local* law enforcement agency in
2 this state shall make available a brochure on hate crimes to victims
3 of these crimes and the public.

4 (b) The Department of Fair Employment and Housing shall
5 provide existing brochures, making revisions as needed, to local
6 law enforcement agencies upon request for reproduction and
7 distribution to victims of hate crimes and other interested parties.
8 *In carrying out these responsibilities, the department shall consult*
9 *the Fair Employment and Housing Commission, the Department*
10 *of Justice, and the Victim Compensation and Government Claims*
11 *Board.*

12 SEC. 35. *No reimbursement is required by this act pursuant*
13 *to Section 6 of Article XIII B of the California Constitution for*
14 *certain costs that may be incurred by a local agency or school*
15 *district because in that regard this act creates a new crime or*
16 *infraction, eliminates a crime or infraction, or changes the penalty*
17 *for a crime or infraction, within the meaning of Section 17556 of*
18 *the Government Code, or changes the definition of a crime within*
19 *the meaning of Section 6 of Article XIII B of the California*
20 *Constitution.*

21 *However, notwithstanding Section 17610 of the Government*
22 *Code, if the Commission on State Mandates determines that this*
23 *act contains other costs mandated by the state, reimbursement to*
24 *local agencies and school districts for those costs shall be made*
25 *pursuant to Part 7 (commencing with Section 17500) of Division*
26 *4 of Title 2 of the Government Code. If the statewide cost of the*
27 *claim for reimbursement does not exceed one million dollars*
28 *(\$1,000,000), reimbursement shall be made from the State*
29 *Mandates Claims Fund.*